SUPREME COURT, U. S.

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FILED
JUL 8 1976
MICHAEL RODAK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1466

BOSTON HOME AND SCHOOL ASSOCIATION,
PETITIONER,

v.

TALLULAH MORGAN, et al.,
JOHN J. KERRIGAN, et al.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR REHEARING

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The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on June 14, 1976, and (2) granting the petition. As grounds for this motion, petitioner states the following:

I. The Decision in *Pasadena City Board of Education, et al.* v. *Spangler, et al.*, No. 164, October Term, 1975.

On June 28, 1976, following the denial of certiorari in the instant case, this Court handed down its decision in *Pasadena City Board of Education, et al.* v. *Spangler, et al.*, which recognized the limits "beyond which a court may not go in seeking to dismantle a dual school system." 44 L.W. at 5117. The Court said that "These limits are in part tied to the necessity of establishing that school authorities have in some manner caused unconstitutional segregation", and went on to prohibit continual reassignments of pupils to schools where there was "no showing in this case that those post-1971 changes in the racial mix of some Pasadena schools . . . were in any manner caused by segregative actions chargeable to defendants", but were rather attributable to a "quite normal pattern of human migration [which] resulted in some changes in the demographics of Pasadena's residential patterns, with resultant shifts in the racial makeup of some schools." *Ibid.* The Court concluded that the scope of the remedy should not extend to racially balancing such schools, "as these shifts were not attributed to any segregative action on the part of defendants". *Ibid.*

The Court's holding is on all fours with the petitioner's contention that the District Court's order in Boston should not have reassigned pupils to require racial balancing in the approximately 110 Boston schools in which the racial imbalance could similarly be shown to have been the result, in the first instance, of "quite normal patterns of human migration [which caused] changes in the demographics of [Boston's] residential patterns", (see petitioner's offer of proof outlined at pp. 9-11 of the petition, and attached maps, Exhibits C - F), but should rather have been limited to the approximately 50 particular schools

in which the racial imbalance was found to have been caused, in whole or in part, by School Committee action.

In *Pasadena*, this Court also decided that the School Board's continuing failure to fully desegregate teacher and administrator hiring and promotion did not warrant a continuing duty to require racial balancing in every school. This holding is identical to the petitioner's contention that the District Judge's sweeping mandatory injunction (which had as its goal the racial balancing of every Boston public school) was not warranted by that Court's previous finding of a dual school system, where the only segregatory effect of School Committee action found to have affected about 110 out of Boston's 160 schools related to discriminatory teacher and administrator assignments, rather than to any School Committee action causing racial imbalance (petitioner's reply brief, p. 5).[1]

We can conceive of no reason why the same guidelines and logic that the Court has now specified regarding the proper scope of a remedial decree after a mandatory injunction has once been issued, should not also be applicable to determine the proper scope of a mandatory injunction in the first instance.

II. The Justice Department's Involvement

We feel that the highly publicized reversal by the Justice Department of its original decision to request this Court to grant our petition has unwittingly caused us prejudice. The primary reason for the reversal appears to have been the Attorney General's concern that the

[1] There we pointed out that "We do not dispute the District Court's findings that, in some manner, the violation affected every school. Indeed, the Court's findings on discriminatory teacher assignments alone make this clear. From this it should not automatically follow that the remedy must require the racial balancing of every school."

Justice Department's backing of our petition would have been misconstrued as a vindication of the violence which has accompanied desegregation in Boston. This fear appears to have overridden the Department's original consideration of the strict legal merits of our petition, which, in argument before this Court on the *Pasadena* case, Solicitor General Bork suggested merited the Court's attention.

The petitioner cannot control the actions of everyone in Boston, but it *has* exhorted its 60,000 members from the very beginning of these proceedings that the only proper forum in which to seek relief from the District Court's sweeping mandatory injunction is through the courts, and *not* through resorting to violence in the streets or school buildings of Boston.

The petitioner is comprised of over 125 local parent-teacher associations throughout the city, almost all of which have conducted themselves in a legal, responsible and peaceful way. The South Boston High School local chapter, where most of the violence has occurred, has actually been expelled from the Boston Home and School Association for over a year because it is controlled and officered by other than parents of children in the school, in violation of the petitioner's by-laws.

The constructive role of the petitioner was explicitly recognized by the District Court in its Order of December 16, 1975, placing South Boston High School in receivership, wherein the Court said (p. 11, note 3):

> "The Association described is the South Boston *High School* Home and School Association and is to be distinguished from the Home and School Association of South Boston, which is part of an alliance of district associations which has participated constructively in these proceedings, represented by Thayer Fremont-Smith, Esquire, and whose president, Mrs.

Marie Clarke, serves on the executive committee of the Citywide Coordinating Council appointed by the court."

Solicitor General Bork made it clear (both to this Court during argument in *Pasadena*, and in a meeting with petitioner's counsel) that he considered our position with respect to the proper scope of a remedy in a northern city with close-knit ethnic residential neighborhoods, to be legally correct. Even when the Attorney General finally decided not to take the unusual step of intervening prior to this Court's granting a petition, the Justice Department made it clear (both in public announcements and in conversations with petitioner's counsel) that the Department *would* file a brief in support of our position should the Court decide to grant the petition.

The President, in filing legislation with the Congress (which legislation, like our petition, would limit the scope of desegregation remedies to the specific schools whose racial imbalance was caused by unlawful acts of a local school board, rather than housing patterns),[2] has described large scale court-ordered busing as "an issue of profound importance to our domestic tranquillity and the future of American education" (*Boston Globe*, June 25, 1976).

Even if this Court were to disagree with our arguments, and to affirm the decisions below, its reasoning could not help but clarify the guidelines for other large northern cities with ethnic neighborhoods (e.g., Chicago, Philadelphia and Los Angeles) where desegregation suits are now being contemplated.

The great majority of Boston parents, although they perceive the District Court's Order as a threat to their

[2] Spokesmen for the Justice Department described this legislation as encompassing the same arguments which would have been made to this Court had the Department decided to file the brief it had prepared in support of our petition.

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neighborhoods and an infringement on their personal liberties (see separate Appendix, pp. 6, 8, 11, and 12) have peacefully obeyed the law and looked to the courts for redress of their grievances. We submit it is manifestly unfair to deprive these citizens and the nation of their day in court before the country's highest tribunal, simply because a relatively few citizens have behaved in an illegal, irresponsible, and despicable manner.

Conclusion

If this Court has read our submissions and reads the Committee report published as a separate Appendix hereto, it cannot be ignorant of the agony of Boston. The denial of certiorari can only be interpreted to mean either this Court is insensitive to that agony, or feels incapable of devising any better remedial guidelines. We find it difficult to accept either alternative.

For the reasons set forth above, as well as those contained in its petition for writ of certiorari and reply brief, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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APPENDIX TO PETITION FOR REHEARING

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Text of Mayor White's Committee on Violence Report Issued June 25, 1976

Members of the Committee are as follows:

THOMAS MCGEE, Speaker of the State House of Representatives, a Democrat, cochairman.

DAVID NELSON, Suffolk Superior Court judge, cochairman.

United States Senator EDWARD W. BROOKE, a Republican.

GERHARD BLEICKEN, chairman of the John Hancock Mutual Insurance Co.

RICHARD HILL, chairman of the First National Bank.

HUBERT JONES, MIT professor and former head of the Roxbury Multi-Service Center.

AVI NELSON, Herald-American columnist and WNAC-TV talk show host.

W. DAVIS TAYLOR, president and publisher of The Boston Globe.

EDWARD MCCORMACK, former state attorney general.

REV. MICHAEL HAYNES, pastor of the 12th Baptist Church.

REV. WALTER WALDRON of Holy Cross Cathedral.

REV. ROBERT GOLLEDGE, vicar of the Old North Church.

FRIEDA GARCIA, director of the Consultation and Education Program at Boston University Medical Center.

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Following is the text of the report of the Mayor's Committee on Violence:

You appointed the undersigned to serve on an ad hoc committee to study the causes of racial violence and tension in our city and to report the result of our deliberation to you. This report is made in compliance with that mandate.

We wish to emphasize that this is a collective report. While it is the product of individual contributions based on objective evaluation of discussion with various individuals who appeared before us, and on intra committee dialogue, the findings, conclusions, suggestions and recommendations are to be considered by you, in whole and in part, as a group effort.

I. Procedure

A. We elected Thomas W. McGee and Davis A. Nelson as co-chairmen of the committee.

B. We unanimously voted that no subject of deliberation or statement by any person meeting with us would be quoted or made public.

C. We met at the Boston Public Library on 10 occasions, with practically total attendance on each occasion.

D. Persons meeting with us, listed alphabetically and not in order of their appearance, included:

1. Gregory Anrig, Massachusetts Commissioner of Education
2. Robert Dentler, court-appointed expert, Dean, Boston University School of Education
3. Robert DiGrazia, Boston Police Commissioner
4. Raymond Flynn, State Representative — South Boston
5. Louise Day Hicks, President Boston City Council
6. Ellen Jackson, Director Freedom House Institute of Education

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7. Dennis Kearney, State Representative — Charlestown, East Boston
8. James Kelly, President South Boston Home and School Association
9. Mel King, State Representative South End.
10. John Kerrigan, Member Boston City Council
11. John McDonough, Chairman Boston School Committee
12. Evelyn Morash, State Board of Education
13. Elvira Palladino, Member Boston School Committee
14. Kathleen Sullivan, Member Boston School Committee
15. Bill Owens, State Senator Mattapan
16. Mortin Walsh, Regional Director of Community Services, U.S. Department of Justice
17. Kevin H. White, Mayor, City of Boston

E. We worked without staff, save for Ms. Teri Weidner of your office who assisted in scheduling participants. The purpose for eliminating staff participation was to make the product of our deliberations be that of the principals you named to serve, not that of a professional staff person. Our meetings covered all facets of life in the city including, but not limited to, those that were social, political, educational, economic and legal.

F. The areas into which we formally voted to make specific inquiry included:

1. School structure and school administration
2. Public Safety
3. Unemployment
4. Housing
5. Summer jobs and recreational opportunities for the young.

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II. Background

A. It is sad that Boston, the cradle of liberty where the first shot was fired in pursuit of American freedom and the first blood shed by men of both black and white skin for the cause of American justice, should on the occasion of our Bicentennial celebration be portrayed across the nation and around the world as a city of racial tension.

Boston, like much of the nation, has seen a change in attitude in the last decade from one where anything was possible to one where everything and everyone is suspect.

B. We are living in a city that should be the envy of the nation and the world as far as quality of living is concerned. We are the medical center of the world; our colleges, museums, theatres, performing arts centers, etc. are unsurpassed anywhere. The concept of free public school education originated in Boston, and our colleges, universities, business and banking institutions have agreed to participate in improving the quality of those public schools. But Boston is not the Shangri-La of cities. This city which has been in the forefront in the never-ending struggle for human dignity and equal opportunity is being torn apart by violence which has racial overtones.

C. We are witnessing a struggle between whites and blacks who are angry, bitter and frustrated because of poverty, unemployment, poor housing, inferior education, and court-ordered busing.

It is not the typical confrontation of the poor against the rich, the young against the old or the urban inner-city disadvantaged against the suburban affluent. The city is in chaos because ethnic groups which have much in common are each giving vent to their frustrations against those others because those others seem somehow responsible for their unsatisfactory station in life. In fact, all should be working together to improve the schools, to create decent housing out of unsanitary living accommodations, to make

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the streets and public transportation system safe, to protect their homes and families, to fight for jobs and to seek a voice in the shaping of the destiny of themselves, their children and their children's children.

D. In this setting, Mr. Mayor, you formed this Committee to meet with political and community leaders who would not or could not meet with one another. You told us that we were not to hold "hearings" in the traditional sense, but rather, we were to meet and listen. We were not to debate; we were to discuss. We were not to proselytize; we were to be educated. We were to listen to their arguments, but not to argue the merits thereof. These things we have done.

E. You asked us to combine our knowledge of the city, free of preconceived prejudices to the extent that is possible, with the information imparted to us by those with whom we met. Then we were to report to you what the problems are, and recommended what you, as chief executive of this troubled city, could do to resolve them and make a start toward bringing hope, understanding and progress back to Boston.

F. We do not pretend to have made an in-depth, fact-finding study; that would take months, not weeks. Nor can we state that we heard from all segments of our society; that would require at least 70, not seven, sessions.

What we can report is that this committee has had the unique opportunity to have frank discussions and free exchange with leaders of the black community, the anti-busing forces, law enforcement officials, educational representatives, and those raising otherwise unheard voices of moderation. This would not have been possible, in our opinion, without two important factors being present:

1. You appointed to this committee men and women of diverse views from varied stations of life. As a result, each person who met with us felt that he or she was not

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in a totally hostile environment. Because of the composition of this committee, such persons could feel that they had "friends in court;" and

2. A promise was made, and kept, that persons meeting with us could talk without having their remarks quoted and their positions denounced or praised by this committee or individual members hereof.

III. Findings

1. School structure and school administrations

A. Lack of Communications. The significant lack of communication between blacks and whites results in neither side giving much credence to the conflicting concerns of the other — i.e. the concern for the blacks for equal educational opportunity and the elimination of a dual school system in which the black system was inferior to that offered to the whites, and the white concern about the possible destruction of a close-knit community and the loss of control over the education and the destiny of their children.

B. No Compromise Attitude. Many of the persons who met with us were so totally convinced that their side's cause was right and that the "other side" had no justification for its position that they have adopted an "unconditional surrender" or "total victory" mentality. They left no room for moderation or compromise in such a posture, and they demonstrated no willingness to concede that maybe, there is a scintilla of legitimacy to the other side's concerns. However, we believe that we could discern, even from the most militant, areas in which, with proper leadership and communication, a consensus could be reached.

C. Lack of Representative School Committee. In a School System that exceeds 50% black and other minorities, there is no minority representation on the Boston School Committee. Practically all persons who met with us conceded that, under the proper circumstances, this should be remedied.

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D. Boston School Committee.

1. The fact that the Boston School Committee by official action created a dual school system has been decided by a U.S. District Court and affirmed by the U.S. Circuit Court of Appeals and the U.S. Supreme Court.

2. The Boston School Committee is not now fully responsible for running our public school system. At present, three entities have assumed or have been delegated such responsibility: the School Committee, the Superintendent and Judge Garrity.

3. Because of the omnipresence of the Court, the Committee (and the Superintendent) are unable to make operative fiscal and educational decisions, as well as personnel assignments. Responsibility for these now lies at the doorstep of a non-educational agency, the court.

E. School System Under Judge Garrity Order.

1. Of 165 schools in the system, 150 appear to be working well. This fact ought to be publicized more.

2. The conflict between the School Committee, Superintendent and Judge Garrity as to who sets and carries out school policy is a deterrent to the system's reaching a maximum level of quality education. For example, three million dollars was set aside for occupational resources, but it could not be utilized because of failure to appoint an administrator. This failure was the result of conflict between the Committee and the Superintendent. The administrator was finally appointed effectively this June, and almost immediately reoffered his resignation because he saw no administrative commitment to the program.

3. The magnet schools are working well, but the input of colleges and universities, as well as business and labor, has not reached its full potential.

4. The massive police presence within school facilities is inimical to good education.

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5. Lack of uniform code of discipline causes conflict between counter-culture permissiveness and the approach of the strict disciplinarian. It also establishes a fertile field for rumor, charge and countercharge of unequal treatment in matters of discipline.

6. One person claimed that currently, the great majority of the schools in the Boston system have a higher level of civility, attendance and learning than the thirteen largest school systems in the country, but since busing began, the atmosphere of prejudice and frustration in a few of the schools has resulted in minimal education benefits to the attending students.

7. The experience of Boston Technical, Girl's Latin and Trotter School, all located in identifiably black neighborhoods but formerly populated by predominantly white students, would seem to indicate that, for some, the interest in quality education overrides any concern about the physical location of the facility. It should be added that these schools successfully attracted minority and majority students from all geographical areas and economic brackets in Boston. This was accomplished on a voluntary basis long before the court-ordered busing decree of 1974.

8. Many of those opposed to court-ordered busing feel that their historically close-knit community is being injured by the destruction of the neighborhood school system. They are angry and resentful of a program that seems to them imposed by decree and to be impervious to their political opposition. One possible consequence of the frustration with the limitations of the political process, aggravated by lack of information or too much misinformation, is a resort to violence. There are some who are frustrated and angry because of unemployment, poverty and alienation from government. For them, the orders acts as a catalyst.

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9. One of the tragedies is that the issue has become personal to all concerned citizens. They might not fully understand the issues, and they might have no understanding at all of the other side's problems, but they know where they stand.

10. Over 40 percent of Boston's school children are on welfare. The Title I Federal money, which is available to youngsters in poor school districts for food, etc., does not follow the child when he or she is bused to a school that does not qualify for Title I funding.

11. While we recognize that racial tensions have increased since the advent of court-ordered busing, the contention that there were no racial conflicts in the Boston Public Schools before Judge Garrity's order is contradicted by the fact that in October of 1970, the Boston School Committee appointed a commission "to investigate charges of disruption and violence . . . both within and immediately outside the Boston Schools." (See pp. 25-27 infra)

12. Phase II B of Judge Garrity's order should provide greater stability in those schools where the plan is working since the parents and the students can predict with certitude the schools the children will be attending in the future.

13. Many people who are against the court-ordered busing are hoping for moratorium on the program to serve as a cooling-off period. Although they and this committee recognize the unlikelihood of such an event, the idea has strong support in some quarters and equally strong opposition in others.

F. Community Involvement.

1. The people of Boston are tired and angry. They want to be left alone to walk the streets, drive through different neighborhoods, ride its public transportation and

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educate their children to their fullest potential free from the fear of random violence to which they may be subjected because of the color of their skin. To many, the answer to the safety question is stricter law enforcement with regard to crimes of violence and swifter, surer punishment for convicted offenders.

2. Others say that to achieve this the people must first become involved, individually and as a community. For some, no policy of action offers as much potential as the enlistment of community based resources. Organizations and leaders with credibility in their respective communities represent a source for dealing with the causes of violence.

It is the contention of some that the unwillingness of these organizations and leaders to get involved makes more difficult any proposed resolution of the problem.

3. Some would say if we are to have quality education in our schools, then we must have community participation and community acceptance. This does not mean that one must like Judge Garrity's plan or not seek modification within the legal or legislative system. An obvious concern of all in Boston is for the quality of education being offered the children, today. Active involvement in trying to improve the schools is important.

4. In most neighborhoods the parents and community leaders are playing an active role, but in some areas, the "them-against-us" attitude prevents any meaningful participation by responsible moderates.

If one tries to make the desegregation plan work in those areas where Judge Garrity's plan is opposed, he or she loses the status as "one of us" and becomes identified as "one of them." Conversely, if one tries to oppose the Judge Garrity plan in an area which favors it, he or she runs the same risk of being ostracized. The victims of this struggle are the children who are going un-

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educated at this time. No one in the city desires this result; yet, sometimes, those who are the most militant cause the more moderate majority to change their course of action because of their concern about peer or community rejection.

5. City wide Coordinating Council (CCC) was to be the eyes, the ears and the strong right arm of the Judge. It has proven to be too large, too deeply involved in internal struggles and it received insufficient backing from the court. The result of these inherent inadequacies has been that, although its function is a necessary ingredient to the court order, it has not led, has not arbitrated, has not conciliated and has not worked.

6. The feeling of pride in past accomplishments and hope for the future has been undermined and replaced in our different communities by hatred, fear, frustration and anger. We are a depressed city with depressed communities.

7. We recognize the feeling of the neighborhoods of Boston that they have a right to exist. We reject any notion that voluntary groupings of people in sections of the city on the basis of ethnic background is a throwback to the medieval age. Such areas as East Boston, South Boston, Roxbury and Charlestown can teach us much about the enduring value of helping our neighbors, of family, of heritage.

The spirit of these neighborhoods has been one of the principal reasons why Boston has been known everywhere as one of the most livable cities in the nation. They must not lose their identity.

What some in the neighborhoods have not learned is that each must live at peace with the others, that each does not and cannot exist in a vacuum, that all are part of Boston. It is true of neighborhoods of Boston, today, as it was of the 13 colonies 200 years ago, that we must all hang together or we will all hang separately.

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8. Boston is a city of neighborhoods, delineated by ethnicity, housing patterns, history, geography and culture. The city is strong when these diverse neighborhoods use their strengths and sense of pride to pull together to meet a common enemy. The perception of some is that instead of fighting against unemployment, inadequate housing, crime, drugs and poverty, we are witnessing the poor whites contesting the poor blacks in an internecine struggle that threatens the city's very existence. On the other hand, the majority of the anti-busing community perceives the situation not as a class of racial struggle but as a question of freedom and individual prerogatives.

9. Everyone outside of Boston asks, "Why are the leaders silent?" Many leaders are not silent. No one in a leadership position seems to be neutral, and if any "leader" tries to speak with moderation, serve on a biracial council, try to show some understanding of the other side of the issue, then he or she runs the risks of being no longer a leader. The moderate is silenced by fear; the compromised loses his or her constituency; the militant ("unconditiontial surrender") individual becomes the spokesperson; and the sickening cycle of "vituperative rhetoric — assault — retaliation — increased fear" goes on and on in ever-increasing intensity.

10. It was strongly represented to us that many of the constituents among those who oppose court-ordered busing, as well as among those who support busing, are without forceful political leadership at the highest level. The former group believes that 80 percent of the citizenry at large agree on an anti-busing position, and yet there is no support for this position by the Governor, by any of the Congressmen or by any of the others in the highest elective offices. The latter group feels that whatever support is given to the implementation of the court-order is, for the most part, reluctant, conflicting and soft. This lack

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of representation tends to strengthen the hands of those who claim that moderation will not succeed.

2. Public Safety

a. Boston Police

1. In the opinion of some, the Boston Police Department is in desperate need of black officers and administrators. (There are 2300 police officers of whom less than 130 are women, and minorities. In 1972 it was less than 100.)

2. The Civil Service list is not yet published, and the city has an austerity program. But Boston needs more police officers, black and white, particularly for neighborhood foot patrol, and it needs them now.

3. The police have done a commendable job in cutting down on school disturbances. But in the opinion of some experts, police presence in schools is counterproductive to the creation of an educational environment and has resulted in school administrators neglecting their jobs as disciplinarians.

4. There is a perception in most communities that there is uneven enforcement of the law both by police and the courts.

b. State Law Enforcement

1. As is true of the Boston police, State and MDC police have been effective in preventing violence within schools, but there is a question in the minds of some as to whether or not any student can learn in a concentration camp atmosphere.

2. The Attorney General and District Attorney are working with the police departments in a "Special Violent Crime Unit." Some believe that this unit has potential to act as a deterrent through speedy arrest and prosecution, but it has not been fully tested as yet.

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c. Federal Law Enforcement

1. There is strong evidence that an active Federal presence would result in a softening of the intensity of school-related violence. But the same philosophy that police presence in the school is inimical to good education would necessitate that such federal presence within school buildings should be avoided, and their presence immediately outside of school buildings should be as subtle as possible.

2. While in most cases the "street crimes" lend themselves more readily to state prosecution, an argument could be made that the Federal laws covering civil rights, inciting to riot, and potential XIVth Amendment Constitutional equal-protection violations could be more effectively prosecuted by Federal authorities.

3. There is, however, considerable anger on the part of those who believe that Federal law enforcement has been, in the past, one-sided. It must be emphasized that any increased Federal involvement must be even-handed.

d. Judge W. Arthur Garrity, Jr.

1. There is no neutral feeling about Judge Garrity. Some believe that Judge Garrity is the most intelligent and courageous judge on the Federal bench. Others allege that he has a lack of knowledge of and lacks an interest in the affected communities, that he acts as he does because he is unaffected by his rulings, that he refuses to listen to experts, like James Coleman, who disagree with him, and that he is arrogant, stupid, and evil incarnate.

2. Typical of the lack of information, or availability of misinformation, few people seem to be aware that Phase I, the original desegregation plan, was drawn up by the State Board of Education not by Judge Garrity, and ordered by the Supreme Judicial Court of Massachusetts. When the matter was brought before Judge Garrity under

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a suit alleging violation of equal protection under the XIVth Amendment, Judge Garrity ordered the Boston School Committee to carry out the plan drawn up by the State and ordered by the Supreme Judicial Court.

3. Judge Garrity ordered Phase 2, which was his plan, and in endeavoring to assure that the plan is implemented, he has been drawn deeper and deeper into controlling the working details of the school system.

4. Without passing judgment on whether or not the degree of Judge Garrity's involvement in school matters is or is not a breach of the separation of judicial, legislative and executive powers, the extent to which the Superintendent feels a need to respond to the court, independent of, sometimes adverse to, and often without consulting with, the Boston School Committee, has created an administrative nightmare in the school department. This is not intended as adverse comment on the Superintendent's ability or dedication, but, rather, it is recognition of a situation where the chief executive officer of the schools is giving orders to School Department personnel which she received from Judge Garrity and which orders the School Committee might oppose. The School Department personnel have divided loyalties between the Superintendent, who has been given the order from the federal judge, and the Boston School Committee, which will make their assignments, choosing instead to follow what they viewed as the mandate of their constituency, grant their promotions and determine their future.

5. The refusal of recalcitrant members of the School Committee to carry out the Phase 2 plan led to unusual judicial involvement. This same involvement has made Judge Garrity a symbol in the school controversy. He has become a symbol, and, as such, he serves as the rallying point and the object of the slogans and epithets of the antibusing movement in our city. That movement

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sees the aggregation of too much power to one Federal judge as the major cause of the school problems in Boston.

3. **Unemployment**

a. Unemployment does not fall evenly to the whole population. Blacks, women, young people, low income or unskilled, those least able to bear the rigors of unemployment, are called upon currently to bear the largest burden. The economic slump in Massachusetts and the nation, with resulting unemployment of blacks and whites, occurred during the same period of time as the order regarding desegregation.

b. While busing is viewed by many as the cause of violence, others maintain that busing is the symptom, not the sickness. The sickness, some contend, is that people live in substandard housing, with no money, no work and no hope. They have become bitter, angry and frustrated. They see no way out of their misery, and this only exacerbates the situation. They see neighbors with good-paying jobs sending their children to private schools. They see those with better-paying jobs living in the suburbs, where, they believe, you don't have to fear opening your door or walking down the street. They also see that society and the establishment orders their children bused. Then, the whole focus of their grievances is directed toward that issue.

c. Affirmative action programs cause the whites to feel that they are being denied jobs and promotions because of special treatment for the blacks. They perceive quotas, change in test scores, and special preferential hiring policies as discriminatory. The blacks, who have an unemployment rate nearly double that of whites, feel that the whites are keeping blacks out of the unions, and by not allowing them to have an equal opportunity in the job market, are denying them job opportunities.

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d. The housing industry has had the fewest number of housing starts since just after World War II. Unemployment in building trades has approached 50%. No wonder each new project sees a power struggle for the few available jobs. Each side believes the other is getting an unfair advantage (whites because of unions and blacks because of affirmative action plans) when, in reality, they are both suffering.

4. Housing

a. Boston is an old city, and its housing in the inner city is therefore, old, inadequate, often unsafe and unsanitary. Some believe that this housing environment gives constant visual evidence of the lack of future promise and the absence of hope for tomorrow. This absence of hope, the inability to "see a way out", is a major contributing factor to the feeling of frustration.

b. Bank and insurance companies have been accused of "redlining", the core city area, i.e. drawing a red line around sections of the city, classifying the area so encircled as "high risk," and either refusing to finance or insure home and apartment maintenance and rehabilitation or doing so at rates that are prohibitive.

c. It is the contention of some that the Massachusetts Housing Finance Agency (MHFA) and the Federal Housing Administration (FHA) have adopted a highly selective process for financing or insuring housing in the core city area.

d. Without a program of rehabilitation of housing in the inner city, the existing housing will cross the fine line separating outmoded living accommodations from blighted, unsafe and uninhabitable conditions.

e. The existing housing inventory represents a priceless commodity which, in these times of shortages of building materials and supplies, should be preserved and uti-

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lized to the maximum extent possible. This makes sense not only from the economics of construction but also from the viewpoint of social upward mobility.

f. Public Housing Projects:

1. The Public Housing Projects in various sections of our city (e.g., Columbia Point, "D" Street, Maverick Square, Mission Hill, Bromley Heath, Orchard Park, etc.) are poorly located, ill-planned and in such a state of physical disrepair that the chief judge of the Boston Housing Court has seen fit to order the Boston Authority to rehabilitate them forthwith.

2. Project areas have had insufficient security so that the inhabitants have been terrorized and have been forced indoors in constant fear, and visitors have been afraid to come to respond to emergency calls from some public housing complexes for fear of their lives.

3. The problems in these projects pre-date the busing controversy, but in certain instances, anti-busing has been used to justify conduct that is otherwise unconscionable and intolerable.

4. Community action groups such as CDC in East Boston, RAP and TDC in Roxbury, IBA in the South End, etc. have made significant contributions in rehabilitating abandoned or blighted buildings and in converting them into safe and decent "scattered site" housing. Some say this has permitted some tenants eligible for public housing to move from a project with its plywood checkerboard appearance to a new and beneficial environment. Such community sponsored activity is now made possible by judicious utilization of federal subsidization through "Section 8 Leased Housing" programs.

5. Leadership

a. As stated above, there is much comment about a "leadership vacuum" in Boston, but many people feel that

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the polarized portions have too many leaders making too many statements. There is no voice of moderation that speaks for (or is listened to by) all the factions in our city. There has been an inability on the part of Boston's collective leadership, to take steps that could educate, mollify or command in a manner that would ease some of the racial tensions.

b. Political leadership

1. There has been altogether too much divisive and inflammatory rhetoric by political leaders.

2. Many leaders believe that any effort to conciliate or arbitrate will result in a loss of the leadership position. We cannot accept this. It has been said of trade unions that a test of leadership is not the ability to incite one's following to walk out, but, rather, the capacity to get the members to accept the labor-management contract made and to follow him or her back to work. That same test of leadership is present in the busing controversy. Political and community leaders must do more to meet this standard.

3. Many people feel that you, Mr. Mayor, have not done all that is to be expected of this city's chief executive. Because you have made an effort to be passively understanding of both points of view, you have been criticized by white leaders for "waffling" on the issue of busing, not taking a leadership role against violence and for capitulating to the judge on fiscal issues. Blacks feel you have defaulted in leadership duties by not wholeheartedly supporting a court order, by not providing moral leadership on the issue of violence.

4. The majority of the members of the City Council are considered to be members of the antibusing forces in this city. In the opinion of some, by opposing the law, urging greater resistance and making impassioned speeches on one side of the busing issue, they have raised serious

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doubts as to whether or not they represent the entire city or a narrow constituency. However, in the opinion of others, they have reflected the majority perspective.

5. The School Committee's spending so much time quarreling over patronage and prerogatives has been, to some, a factor in its inability to provide the leadership necessary for us to reach our potential as the best public school system in America.

6. Members of the state legislature have, as would be expected, represented the views of their representative districts. They have agreed to work together on the issue of jobs, which is a very healthy sign.

7. Church leaders have, for the most part, either been silent or said the wrong thing at the wrong time. If there is a leadership vacuum, it is in the area of moral persuasion which is the responsibility of our spiritual leadership.

8. News media, including newspaper, radio and television, have shown greater interest in reporting the dramatic wrong than informing the people about that which is not terribly exciting but is right. There are those who say there is a direct relationship between the coverage given demogogues and those prone to violence and the intensity of their activities in the presence of a camera or reporter.

On the other hand, criticism of the media comes from both sides. Members of the anti-busing movement are also upset that the media has slanted the coverage against them by unfair portrayals of pervasive racism. Both sides feel that favoritism is given the other side in coverage of racial incidents.

9. Black leaders have not called for violence but actions that provoke and will predictably lead to interracial clashes serve neither the black community nor the city well and should be avoided.

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10. Some point out that business leaders are not meeting their responsibilities in developing a significant moderate element in the city. As with political, religious and new leaders, there are some business leaders who are taking that extra step to be of service, but they are the exceptions, not the rule. Others argue that it cannot fall upon the shoulders of businessmen to solve the city's problems.

11. Each community and neighborhood has leaders in opposition. We do not fault their advocacy of positions of their constituencies, so long as it is a reasonable exercise of free speech. However, their rejection of anyone who indicates a willingness to serve in a moderate capacity (even though that person's motivation is to get the best possible education for his or her child, irrespective of political or social views) will only increase tensions, prevent accommodation on non-busing, non-school issues, and ultimately hurt the very people those leaders are out to help.

12. One plan that was mentioned, supported by some but not developed in depth, is the voucher plan, whereby each child would be awarded a voucher redeemable for the per-pupil cost of a public school education at the school of the parent's or guardian's choice.

6. **1970-71 "Commission on Violence Report on the Public Schools."** a. Since it has been repeatedly asserted that the racial violence in the schools and in the city is a new phenomenon that resulted from "Judge Garrity's busing order," we thought it appropriate to quote from a report made by an unpaid commission, similar to our committee.

1. The Commission was created "In response to a communication from (the Boston City Council) regarding a pattern of violent incidents both within and immediately outside the Boston schools . . ." (p. 1).

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2. "Unquestionably the administrator is the key person in the prevention of violence in the schools. Principals and headmasters who have a deep commitment to education, who maintain a single standard, who mingle constantly with students and teachers and who perform public and community relation functions usually run satisfactory schools." (p. 4)

3. "Boredom and restlessness inevitably lead to disruptive behavior." (p. 4)

4. "In no single area was there greater unanimity regarding the cause of violent incidents than with rumor and its effect on the school's proper equilibrium. Simple incidents can easily be distorted or aggravated. Rumor, given credence by newspaper, television and word of mouth, was often allowed to run rampant, with administrators unable to get facts in order to ascertain the truth. Rumors which often seemed to grip a school and a community contributed to greater unrest and disruptions." (p. 5)

5. "The economic level of the student's home is, in most cases, related to his behavior in the classroom . . . many poor students come to school 'up-tight' frustrated and angry. The consequences of poverty are often overlooked as the causes of violence in our schools." (p. 6)

6. "Segregationists, white and black, are ready to exploit every opportunity for disrupting the schools. The tolerance that exists between some white students and some black students is on the surface only. Time for constructive action is running out if we are to prevent polarization." (p. 7)

7. "The mere presence of TV cameras and equipment is almost certain in itself to cause disturbance." (p. 9)

8. "Almost every person interviewed by this Commission echoed in his own way the belief that Boston school problems are only a microcosm of those affecting our larger populace. Unrest, anger, poverty, drugs and

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confrontation are not unique to our schools or to our city." (p. 9)

9. "There is little doubt to the daily or even to the casual observer of our school system that our educational system will remain in chaos as long as society at large remains in a state of crisis." (p. 10)

IV. Recommendations

A. We recognize and affirmatively assert that these findings and recommendations are based upon a limited number of meetings with a few selected individuals and, therefore, must be considered in a different light than would such findings be considered if they were the product of a lengthy and thorough investigation. However, time is a luxury we had to do without, and the fear and potential for violence that grips our city must be addressed without delay.

Of one thing we are confident, and that is that something must be done. If this report helps you in your deliberations and prompts you to take the action recommended herein, take action different from that which we recommended or even take action that we have not contemplated or recommended, then the time, the energy and the effort will have served a very useful purpose.

B. *Action by the Mayor*

1. You should become the active leader of our city by word and by deed. You should start making a series of strong statements on the issues of jobs, civic pride and spirit. The Court's desegregation order is the law unless, and until, it is modified by the U.S. Supreme Court in future litigation or by legislation. You don't have to agree with the judge's decision, but you did take an oath to support the laws of this state and this nation. Therefore, you should encourage the majority which wishes to change the law to act within the confines of the judicial or legislative process.

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2. You should organize a committee similar to this body. a. The Committee should have recognized and respected representatives of the minority and white communities, business and/or financial leaders and religious spokespersons. b. The committee should have no more than 10 or 12 members. c. The committee's main responsibility should be to meet with and attempt to unify all civic and community leaders on behalf of a program of non-violence and civic stability. d. The committee should serve as a vehicle for addressing, mediating and/or conciliating differences which could embroil the city in violence or conflict.

3. Organize jobs and other activities for the young people, black and white, who are out of school and unemployed.

4. Institute a series of programs to restore some spirit and pride in the city and its neighborhoods. Young people should be utilized in recreation areas and in clean-up campaigns. The various communities can be pulled together by Little City Halls, etc. for neighborhood activities unrelated to the divisive school issue.

5. Expand the athletic and recreational facilities of the city, particularly on hot summer nights and on weekends. Every effort should be made to fund these programs through private sources rather than tax dollars.

6. Support the law enforcement programs, including an expansion of the police force and the Special Violent Crime Unit.

7. Initiate steps to determine the conditions under which expanding the Boston School Committee would be feasible, with particular attention given to district representation.

8. In addition to the summer jobs for youth, a long-term, year-round plan for employment of young people, in and out of school, should be set in motion.

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Again, the funding for this should not be burdensome to the taxpayer.

C. *Action by Judge Garrity*

Although we choose not to make direct recommendations to Judge Garrity, we make the following recommendations which we hope you will have your Corporation Counsel communicate to the court.

1. As soon as he is satisfied that the Boston School Committee will carry out the court's orders, he should step aside and turn the responsibility for running the schools back to the Boston School Committee.

2. He should find conditions under which he will remove South Boston High School from receivership and allow the South Boston community to make that school an integral part of the school system.

3. The CCC as presently constituted should be abolished, replaced by a smaller committee and should be given authority to act for the court so that every dispute or minor controversy will not be the subject of judicial proceedings. If Judge Garrity were to turn over the responsibility for the administration of the schools back to the School Committee, then a revitalized CCC, given proper authority, could be an effective watch dog. This Committee feels strongly that with the right membership, proper guidelines and sufficient authority, the CCC could make a significant contribution toward providing more light and less heat in the school controversy.

D. *Boston School Committee*

1. The Committee should satisfy the court that it is willing to carry out the obligations of its elective office.

2. It should end the present unworkable relationship between itself and the Superintendent.

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3. The Committee must, without abrogating its powers, more fully involve the colleges, universities, businesses and labor organizations in its school program. Those who are providing such help should not be treated as outsiders or interlopers but, rather, as a source of talent and expertise which can enrich our school system.

E. *Other Recommendations*

1. Jobs should be obtained from whatever legitimate sources are available. These jobs should be used to revitalize neighborhoods, operate parks and recreational facilities on evenings and weekends and should be employed so as to help instill a new vibrancy in our city and its neighborhoods.

2. The police force should be increased and more efficiently utilized. Patrolmen should have a high visibility in all neighborhoods, particularly those with a high crime rate.

3. There should be a uniform code of discipline in our schools, and it should be promulgated in time for implementation at the opening of the school year in the fall of 1976.

4. As soon as the proper authorities are satisfied as to student safety, police should be removed from the schools, and teachers, principals and headmasters should be in charge of discipline.

5. One concept on which there was some interest from many sides is that of "community control of schools." It means different things to different people, but some further exploration in this direction might serve to find some common ground for compromise between factions that view their positions as irreconcilable.

6. Title I money should follow the child, regardless of where he or she attends school.

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7. The church leaders should educate their community. It is not enough to issue high moral pronouncements; these leaders should explain to their members the reasons for official action and the reasonable alternatives. The credibility of church leaders uniquely enables them to inform where there is no information and allows them to correct erroneous conclusions based on misinformation. Care, of course, must be exercised to strictly preserve the Constitutional separation of church and state.

8. Black and white state legislators should continue to meet on jobs, but they should expand their agenda to include housing, health care and the free exchange of information on all issues that divides their constituencies.

9. All citizens, black and white, should be guaranteed the right to travel in safety in any section of the city. Police should work with neighborhood organizations to establish a communication system with the schools and law enforcement agencies to help make streets safe to travel, schools safe to learn in and prevent a minor incident from developing into a major confrontation.

10. We are witnessing in Boston a new form of violence: the use of terrorism as a political weapon. The smashing of store windows, the defacing of public landmarks, the destruction of historical shrines are examples of the stepped-up pace of violence in the city. We, as all decent people in Boston, feel a sense of shame at these outrages against public order and senseless abuse of national monuments. There is no partisan advantage in such tactics. It shames the city. We repudiate such acts and ask for vocal opposition to them from the city's leaders. Silence before these intolerable acts only encourages more and worse ones.

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Conclusion

This city desperately needs a restoration of human spirit, a renewal of that feeling of brotherhood, understanding and love that so characterized our past.

It is not enough to say that the whole nation is depressed, and, therefore, we must be a sad city. This need not be.

Nor must we be bitter and angry because others in this country so react to disappointments and frustration.

We believe that, in at least this area of life, the area of human relations, nostalgia can be well worthwhile. Let us look at and emulate our recent past, when a young man from Massachusetts had to put aside our selfish interests to ask what we could do for our country and our fellow man; and look at the past of two hundred years ago when the sense of values related not to wealth, creature comforts or the lack thereof, but to freedom, liberty and equality for all.

Boston can lead Massachusetts, and Massachusetts, the nation, in a renaissance of love, in a rebirth of our spirit and in a renewal of our faith in one another and in ourselves.

We ask you, Mr. Mayor, to lead a crusade to bring this about.